

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JPMORGAN CHASE BANK, N.A., et al., }
Plaintiffs, } Case No. 2:16-cv-02282-RFB-CWH
vs. }
LVBP, INC., et al., }
Defendants. }

Presently before the court is Plaintiffs JPMorgan Chase Bank, N.A. and Federal National Mortgage Association's Opposition and Objection to Notice Regarding Intention to Dismiss Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure (ECF No. 45), filed on April 5, 2017. The court construes this filing as a motion to extend time to serve Defendant LVBP Properties, LLC.

On March 7, 2017, the Clerk of Court entered a notice of intent to dismiss under Rule 4(m) of the Federal Rules of Civil Procedure, stating that no proof of service had been filed as to Defendant LVBP Properties, LLC. (Rule 4(m) Notice (ECF No. 36).) The notice required Plaintiff to file proof of service that this Defendant was served by the service deadline, which was February 8, 2017.¹ (*Id.*) On March 9, 2017, Plaintiffs filed proof of service indicating that Defendant was served on March 8, 2017. (Summons Returned Executed (ECF No. 37) at 2.) The next day, Defendant filed an answer and counterclaim. (Ans. & Countercl. (ECF No. 38).)

Plaintiffs now move for a retroactive extension of the service deadline, arguing that good cause exists to extend the deadline. Specifically, Plaintiffs argue that they encountered difficulties

¹ Plaintiffs' amended complaint (ECF No. 13), which added Plaintiff LVBP, Inc. as a party, was filed on November 10, 2016. The 90-day service deadline was February 8, 2017.

1 locating this Defendant, requiring them to hire a private investigator to locate potential service
2 addresses for Defendant's manager. They further argue that their process server had to conduct
3 surveillance to locate the manager. Plaintiffs represent that they relied in good faith on their
4 process server's assurances that it had timely served Defendant, but due to various internal errors
5 by the process server, service was not accomplished. According to Plaintiffs, they did not realize
6 service had not been accomplished until they received the Rule 4(m) notice from the court.
7 Plaintiffs argue that upon realizing service was not accomplished, they immediately mobilized and
8 served Defendant the day after the Rule 4(m) notice was entered. Plaintiffs further argue that they
9 ultimately "effectuated personal service on [Defendant's manager] only one day outside the time to
10 serve, resulting in the immediate filing of a responsive pleading by LVBP Properties."² (Opp'n &
11 Objection (ECF No. 45) at 5 (emphasis in original).)

12 Rule 4(m) of the Federal Rules of Civil Procedure establishes the time for service on
13 domestic defendants:

14 If a defendant is not served within 90 days after the complaint is filed, the court—
15 on motion or on its own after notice to the plaintiff—must dismiss the action
16 without prejudice against that defendant or order that service be made within a
specified time. But if the plaintiff shows good cause for the failure, the court must
extend the time for service for an appropriate period.

17 The court must extend the 90-day time limit of Rule 4(m) if the serving party shows good cause for
18 failure to serve within 90 days. *See Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009)
19 (citing version of Rule 4(m) with 120-day deadline). If the serving party does not show good
20 cause, the court has discretion to extend time for service, or to dismiss the complaint without
21 prejudice. *In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001). The court's discretion to extend time
22 for service, or to dismiss without prejudice for failure to timely serve, is broad. *Id.*

23 Courts must determine on a case-by-case basis whether the serving party has shown good
24 cause. *In re Sheehan*, 253 F.3d at 512. Generally, good cause is equated with diligence. *Townsel*
25 v. *Contra Costa Cnty., Cal.*, 820 F.2d 319, 320 (9th Cir. 1987). A showing of good cause requires

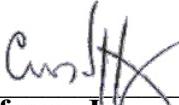
27 ² Given that the service deadline was February 8, 2017 and that the process server's affidavit
28 indicates that Defendant LVBP Properties was served on March 8, 2017, it is unclear to the court why
Plaintiffs argue that they were only one day late in effectuating service of process.

1 more than inadvertence or mistake of counsel. *Id.* “[A]t a minimum, good cause means excusable
2 neglect.” *In re Sheehan*, 253 F.3d at 512 (quotation omitted).

3 Plaintiffs have not demonstrated good cause to extend time to serve Defendant LVBP
4 Properties. Although they made significant efforts to locate the Defendant using their private
5 investigator and process server, Plaintiffs do not explain their own failure to confirm that service
6 had been accomplished before the service deadline or to verify that proof of service was timely
7 filed with the court. Had they done so, Plaintiffs presumably would have realized the process
8 server’s error and could have moved to extend time to serve before the expiration of the service
9 deadline. Regardless, under Rule 4, the court has discretion, even without good cause, to extend
10 the time for service. Given that Defendant ultimately was served, has appeared in this case, and did
11 not oppose this motion, the court in its discretion will grant the retroactive extension and deem
12 service timely.

13 IT IS SO ORDERED.
14

15 DATED: May 1, 2017

16 
17 **C.W. Hoffman, Jr.**
18 **United States Magistrate Judge**